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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

NO. [redacted]

LOUISIANA POWER & LIGHT COMPANY, ET AL.,
Petitioners

VS.

FEDERAL POWER COMMISSION
Respondent

BRIEF OF STATE OF TEXAS, AMICUS CURIAE, ON PETITION OF LOUISIANA POWER & LIGHT COMPANY, ET AL FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INTEREST OF AMICUS CURIAE

The State of Texas is the country's leading energy producer of natural gas liquids and natural gas according to 1971 statistics from the Department of the Interior. Texas production of natural gas liquids comes to 49.6% of the national total, while the production of natural gas is 38% of the national figure. Of the State's

total production of oil and natural gas, approximately 61% is exported to meet the energy needs of the rest of the nation. (State Energy Policies — Policy Research Project — Research Bulletin No. 1, November, 1973. Lyndon B. Johnson School of Public Affairs, University of Texas at Austin).

The State of Texas has inherent power to regulate intrastate activities in the sphere of natural gas and it has delegated that power and duty to its Railroad Commission by duly enacting Articles 6050, et seq., Vernon's Texas Civil Statutes. The Texas Railroad Commission is actively exercising this power in carrying out its delegated obligations and duties.

Because of the State of Texas' concern with the protection and preservation of the natural gas resources of this State and the effect this protection has upon the health and welfare of the people of this State as well as the people of this nation, the State of Texas respectfully files this brief as Amicus Curiae.

The State of Texas respectfully urges that the petitions for writs of certiorari filed to review the judgment of the United States Court of Appeals for the Fifth Circuit in Case No. 72-1714, *Louisiana Power & Light Company, et al,* vs. *Federal Power Commission*, be granted.

REASONS FOR GRANTING THE WRIT

By the terms of the Natural Gas Act, the individual states of the United States are left free to exert control and regulate natural gas which is produced, transported, and consumed entirely within the State.

Also, by the clear intention of Congress, as expressed in the Hinshaw Amendment to the Natural Gas Act, facilities used to transport natural gas and which are subject to regulation by a State Commission have been held to be exempt from the Act when gas is received into those facilities within the same State in which the gas is then wholly transported and ultimately consumed.

In the instant case, in regard to gas entering United Gas Pipeline Company's Green System East, practically all if in fact not all of this gas is produced and transported in Louisiana, and *all of this gas is consumed entirely within the State of Louisiana.* Yet, by ignoring the case of *Peoples Natural Gas Company* vs. *Public Service Commission*, 270 U. S. 550, and by drawing non-existant distinctions and misconstruing the cases of *California* vs. *Lo-Vaca Gathering Company*, 379 U. S. 366, *Federal Power Commission* vs. *Amerada Petroleum Corp.*, 379 U. S. 687, and *Louisiana Public Service Commission* vs. *Federal Power Commission*, 359 F. 2d 525 (1966) in regard to the "commingling theory" of mixing what would otherwise be purely intrastate gas with interstate gas in gas pipelines, the

Federal Power Commission and the Court of Appeals have deprived the State of regulation of purely intrastate matters.

Likewise, in the instant case, the Federal Power Commission and the Court of Appeals, by misconstruing the Hinshaw Amendment, have extended Federal power into an area reserved to the states under the Congressional intent expressed in the Hinshaw Amendment and have effectively written the amendment out of the Natural Gas Act.

CONCLUSION

A writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

The erroneous interpretation and application by the Court of Appeals of the "commingling theory" expressed in the cases of *Peoples Natural Gas Company* vs. *Public Service Commission*, 270 U. S. 550, *California* vs. *Lo-Vaca Gathering Company*, 379 U. S. 366, *Federal Power Commission* vs. *Amerada Petroleum Corp.*, 379 U. S. 687, and *Louisiana Public Service Commission* vs. *Federal Power Commission*, 359 F. 2d 525 (1966), should be rectified so that gas which is produced and consumed in one state is exempt from Federal Power Commission regulation under the Natural Gas Act.

The erroneous interpretation by the Court of Appeals of the Hinshaw Amendment to the Natural Gas Act should be rectified so that in accordance with the intent of Congress as expressed in Section 1(c) of the Act, gas which is received and consumed in one state is exempt from Federal Power Commission regulation and State jurisdiction is thus not diminished in those instances where Hinshaw exemptions have been applied in the past.

Respectfully submitted,

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I hereby certify that on this _____ day of February, 1974, two copies of Brief Amicus Curiae on Petition for Writ of Certiorari were mailed, postage prepaid to all counsel of record for the parties and that three copies were mailed, postage prepaid to the Solicitor General.

_____

John Milton Richardson